

Message Text

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51

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TO SECSTATE WASHDC 5169

INFO AMCONSUL ZANZIBAR

C O N F I D E N T I A L SECTION 1 OF 2 DAR ES SALAAM 1192

E.O.11652: GDS

TAGS: EAID, PINS, PFOR, TZ, US

SUBJECT: FAA SECTION 32 - POLITICAL PRISONERS

REF: STATE 68545

1. SUMMARY: THIS MESSAGE RESPONDS TO STATE/AID INQUIRY CONCERNING APPLICABILITY TO TANZANIA OF SECTION 32 OF FOREIGN ASSISTANCE ACT (FAA) OF 1973. ALTHOUGH UNDETERMINED NUMBER OF POLITICAL PRISONERS ARE BEING DETAINED ON BOTH MAINLAND TANZANIA AND ZANZIBAR, EMB/AID DO NOT BELIEVE SITUATION CONSTITUTES "SUBSTANTIAL AND CONTINUED VIOLATIONS...OCCURRING AS MATTER OF OFFICIAL POLICY OR OF GROSS NEGLIGENCE ON PART OF GOVERNMENT" AS MENTIONED PARA. 5C REFTEL. END SUMMARY.

2. LEGAL BACKGROUND. (A) MAINLAND TANZANIA HAS AN ACT WHICH PROVIDES FOR PREVENTIVE DETENTION. SECTION 2(1) OF PREVENTIVE DETENTION ACT OF 1962, AS AMENDED, PROVIDES: "WHERE IT IS SHOWN TO THE SATISFACTION OF THE PRESIDENT THAT ANY PERSON IS CONDUCTING HIMSELF SO AS TO BE DANGEROUS TO PEACE AND GOOD ORDER IN ANY PART OF TANGANYIKA OR IS ACTING IN A MANNER PREJUDICIAL TO THE DEFENCE OF TANGANYIKA OR THE SECURITY OF THE STATE; OR THE PRESIDENT IS SATISFIED THAT AN ORDER UNDER THIS SECTION IS NECESSARY TO PREVENT ANY PERSON ACTING IN A MANNER PREJUDICIAL TO PEACE AND GOOD ORDER IN ANY PART OF TANGANYIKA, OR TO THE DEFENCE OF TANGANYIKA OR THE SECURITY OF THE STATE, THE PRESIDENT MAY, BY ORDER UNDER HIS HAND AND THE PUBLIC SEAL, DIRECT THE DETENTION OF THAT PERSON."

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(B) ZANZIBAR OPERATES UNDER "PREVENTIVE DETENTION DECREE"

APPROVED JANUARY 31, 1964 BY FORMER PRESIDENT KARUME AND REVOLUTIONARY COUNCIL. OPERATIVE PARAGRAPH STATES: "WHERE THE PRESIDENT IS SATISFIED THAT ANY PERSON IS CONDUCTING HIMSELF SO AS TO BE DANGEROUS TO PEACE AND GOOD ORDER IN ANY PART OF ZANZIBAR OR IS ACTING IN A MANNER PREJUDICIAL TO THE DEFENCE OF ZANZIBAR OR THE SECURITY OF THE REPUBLIC; OR THE PRESIDENT IS SATISFIED THAT AN ORDER UNDER THIS SECTION IS NECESSARY TO PREVENT ANY PERSON ACTING IN A MANNER PREJUDICIAL TO PEACE AND GOOD ORDER IN ANY PART OF ZANZIBAR, OR TO THE DEFENCE OF ZANZIBAR OR THE SECURITY OF THE REPUBLIC, THE PRESIDENT MAY, BY ORDER UNDER HIS HAND, DIRECT THE DETENTION OF THAT PERSON." IN ACCORDANCE WITH DECREE, ANY POLICE OFFICER MAY ARREST AND DETAIN ANYONE AS CIVIL PRISONER AFFECTED BY SUCH ORDER. (C) THERE IS, IN ADDITION, NATIONAL SECURITY ACT OF 1970 WHICH APPLIES TO BOTH MAINLAND AND ZANZIBAR. SECTION 14(1) STATES: "ANY PERSON WHO IS FOUND COMMITTING AN OFFENCE UNDER THIS ACT OR WHO IS REASONABLY SUSPECTED OF HAVING COMMITTED OR HAVING ATTEMPTED TO COMMIT OR BEING ABOUT TO COMMIT SUCH AN OFFENCE MAY BE ARRESTED BY ANY POLICE OFFICER AND DETAINED." (D) TANZANIAN LAW, THEREFORE, CLEARLY SANCTIONS PREVENTIVE DETENTION IN WAY THAT CAN BE BROADLY CONSTRUED.

3. LEGAL REDRESS. (A) SECTION 2(2) OF PREVENTIVE DETENTION ACT OF 1962 PROVIDES THAT "NO ORDER MADE UNDER THIS ACT SHALL BE QUESTIONED IN ANY COURT". SECTION 6 PROVIDES: "A PERSON DETAINED UNDER THIS ACT SHALL, NOT LATER THAN FIFTEEN DAYS FROM THE BEGINNING OF HIS DETENTION, BE INFORMED OF THE GROUNDS ON WHICH HE IS BEING DETAINED AND SHALL BE AFFORDED AN OPPORTUNITY OF MAKING REPRESENTATIONS IN WRITING TO THE PRESIDENT WITH RESPECT TO THE ORDER UNDER WHICH HE IS DETAINED". SECTION 7 PROVIDES FOR ADVISORY COMMITTEE WITH CHAIRMAN AND TWO MEMBERS APPOINTED BY PRESIDENT AND TWO MEMBERS APPOINTED BY CHIEF JUSTICE. PURPOSE OF COMMITTEE IS TO ADVISE PRESIDENT AS TO WHETHER ORDER UNDER THIS ACT SHOULD BE CONTINUED, RESCINDED, OR SUSPENDED. PRESIDENT IS NOT REQUIRED TO ACT IN ACCORDANCE WITH ADVICE OF COMMITTEE. (IT IS POSSIBLE THERE HAVE BEEN AMENDMENTS TO SECTIONS 6 AND 7 WHICH WE HAVE NOT YET BEEN ABLE TO LOCATE.) (B) ANY ORDER UNDER ZANZIBAR'S PREVENTIVE DETENTION DECREE" MAY BE RESCINDED OR SUSPENDED BY PRESIDENT. (C) SECTION 14(2) OF NATIONAL SECURITY ACT OF 1970 PROVIDES: "ANY PERSON ARRESTED UNDER THE PROVISIONS OF THIS SECTION SHALL, WHETHER OR NOT THE POLICE ENQUIRIES ARE COMPLETED, BE BROUGHT

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BEFORE A MAGISTRATE AS SOON AS PRACTICABLE."

4. POLITICAL PRISONERS IN MAINLAND TANZANIA. THERE ARE SOME POLITICAL PRISONERS IN MAINLAND TANZANIA. IT IS IMPOSSIBLE, HOWEVER, TO PROVIDE RELIABLE NUMBER. LOCAL NEWSMAN WHO WAS RECENTLY EXPELLED FROM TANZANIA TOOK PARTICULAR INTEREST IN THIS QUESTION AND RECEIVED, FROM TIME TO TIME, WRITTEN COMMUNICATIONS FROM SEVERAL MAINLAND DETAINEES. NEWSMAN TOLD EMB. OFF. ABOUT

MONTH AGO THERE ARE BETWEEN 100 AND 200 PERSONS DETAINED ON MAINLAND FOR REASONS THAT ARE NOT FULLY EXPLAINED. HE IS CONVINCED SOME OF THESE DETAINEES ARE POLITICAL PRISONERS. TWO MOST PUBLICIZED GROUPS OF MAINLAND DETAINEES ARE ZANZIBARIS: (A) FIRST AND SMALLEST GROUP WAS ARRESTED AFTER 1964 REVOLUTION ON ZANZIBAR. UNDETERMINED NUMBER ARE STILL IN DETENTION IN MAINLAND JAILS (ZANZIBAR A-10). (B) FOLLOWING 1972 ASSASSINATION OF FIRST VICE PRESIDENT KARUME, WHO ALSO SERVED AS PRESIDENT OF ZANZIBAR, NUMBER OF ZANZIBARIS ON MAINLAND, INCLUDING MIN. OF ECON. AFFAIRS AND DEVELOPMENT PLANNING, A.M. BABU, WERE ARRESTED. AT PRESENT TIME, MAINLAND GOVERNMENT IS DETAINING 18 ZANZIBARIS, NONE OF WHOM HAS YET HAD TRIAL ON MAINLAND, FOR ALLEGED COMPLICITY IN KARUME ASSASSINATION. ALTHOUGH ZANZIBAR HAS ASKED THAT THESE 18 PERSONS BE RETURNED TO ISLAND FOR TRIAL, MAINLAND HAS REFUSED ON PROBABLY CORRECT ASSUMPTION THAT AT LEAST SOME WILL BE CONVICTED AND POSSIBLY EXECUTED.

5. ATTORNEY GENERAL VIEWS SITUATION. IN DECEMBER 23, 1973, INTERVIEW IN GOVERNMENT-OWNED DAILY NEWS, MAINLAND ATTORNEY-GENERAL BOMANI WAS ASKED ABOUT 18 ZANZIBARIS DETAINED ON MAINLAND. BOMANI EXPLAINED THAT BABU AND OTHERS WERE ARRESTED IN APRIL 1972 ON SUSPICION OF INVOLVEMENT IN ATTEMPTED COUP IN ZANZIBAR AND ASSASSINATION OF KARUME. DETENTION WAS ORDERED UNDER PREVENTIVE DETENTION ACT OF 1962. BOMANI THEN CITED SECTION 2(1) OF ACT, ADDING IT MUST THEREFORE BE ASSUMED THAT PRESIDENT WAS INDEED SATISFIED BEFORE HE ORDERED DETENTION OF THESE PEOPLE. ASKED WHEN THEY WILL BE BROUGHT TO TRIAL, BOMANI REPLIED THAT MANY OF WITNESSES THAT WOULD BE CALLED UPON TO GIVE EVIDENCE IN TRIAL ON MAINLAND HAVE BEEN BUSY GIVING EVIDENCE ON ZANZIBAR. UPON CONCLUSION OF PROCEEDINGS IN ZANZIBAR, DECISION WILL BE TAKEN ON THOSE ON MAINLAND. BOMANI ARGUED DETAINEES SHOULD BE TRIED ON MAINLAND RATHER THAN ZANZIBAR BECAUSE THEY APPEAR TO HAVE COMMITTED OFFENCES TRIABLE HERE. HE NOTED: "TECHNICALLY THERE WERE CERTAIN OBSTACLES

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TO TRYING EVERYBODY IN ZANZIBAR."

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ACTION AID-59

INFO OCT-01 AF-10 ISO-00 L-03 H-03 SS-20 PM-07 IGA-02

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6. POLITICAL PRISONERS ON ZANZIBAR. THERE ARE LIKEWISE UNDETERMINED NUMBER OF POLITICAL PRISONERS ON ZANZIBAR. SOME MAY DATE BACK TO 1964 REVOLUTION WHILE OTHERS ARE OF MORE RECENT ORIGIN. GOZ ANNOUNCED ON JANUARY 16, 1974, RELEASE FROM "RE-EDUCATION CENTERS" (READ PRISON) OF 545 PERSONS HELD ON "VARIOUS CHARGES" (ZANZIBAR 0023). THIS LARGE NUMBER IS PROBABLY ACCOUNTED FOR PRIMARILY BY RELEASE OF MANY WHO WERE DETAINED FOR SECURITY REASONS IN PERIOD JUST PRECEEDING 10TH ANNIVERSARY OF REVOLUTION. THREE OF THOSE RELEASED, HOWEVER, WERE FORMER MINISTERS OF PRE-REVOLUTION GOVERNMENT. THREE OTHER MINISTERS FROM PRE-REVOLUTION ERA REMAIN IN DETENTION. IN AFTERMATH OF KARUME ASSASSINATION, LARGE NUMBER OF ARRESTS TOOK PLACE ON ZANZIBAR. OF THOSE ARRESTED, NINE PLEADED GUILTY, SIX WERE ACQUITTED, ONE DIED IN PRISON, AND 47 HAVE BEEN TRIED AND AWAIT SENTENCING (ZANZIBAR 0062 AND A-5). EVEN THOUGH ZANZIBAR LEGAL/JUDICIAL SYSTEM IS NOT KNOWN FOR FAIRNESS, IT IS HIGHLY QUESTIONABLE WHETHER THIS GROUP SHOULD BE REFERRED TO AS "POLITICAL PRISONERS", IN VIEW OF FACT THAT CHARGES HAVE BEEN BROUGHT AND "TRIAL" HELD.

7. PRESIDENT VIEWS SITUATION. DURING OFFICIAL VISIT TO AUSTRALIA, PRESIDENT NYERERE ADDRESSED NATIONAL PRESS CLUB IN CANBERRA ON MARCH 21, 1974. NEWSMEN TOOK OCCASION TO GRILL NYERERE ON SUBJECT OF POLITICAL PRISONERS. NYERERE SAID "I HAVE SOME PEOPLE YOU MIGHT CALL POLITICAL PRISONERS". HE THEN REFERRED TO PERSONS ARRESTED AFTER KARUME ASSASSINATION, NOTING THAT MOST WERE ON ZANZIBAR ALTHOUGH 18 HAD BEEN DETAINED ON MAINLAND. NYERERE SAID THEY WERE DETAINED BECAUSE WE SUSPECT THEY WERE INVOLVED IN
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ASSASSINATION. WHEN ASKED SPECIFICALLY ABOUT BABU, NYERERE SAID BABU IS ON MAINLAND WAITING FOR TRIAL. NEWMAN THEN ASKED IF THERE WERE OTHER POLITICAL PRISONERS IN TANZANIA. NYERERE, CLEARLY IRRITATED AT THIS POINT, SAID I DON'T KNOW WHICH OTHERS THERE ARE BUT PERHAPS YOU HAVE MORE INFORMATION THAT I HAVE. HE SAID I HOPE PEOPLE INQUIRING ABOUT THIS MATTER ARE TRULY INTERESTED IN HUMAN RIGHTS AND NOT JUST EMBARRASSING ME. I WISH THESE PEOPLE WOULD LOOK INTO SITUATION IN SOUTH AFRICA, ADDING

THAT OUR GOVERNMENT IS NOT PERFECT. HE INVITED AUSTRALIAN NEWSMEN TO TANZANIA TO DETERMINE FOR THEMSELVES SITUATION CONCERNING POLITICAL PRISONERS.

8. EMB/AID ASSESSMENT. OUR UNDERSTANDING OF SITUATION IN TANZANIA AS MEASURED AGAINST STANDARDS SET FORTH PARA. 5 REFTEL IS AS FOLLOWS: (A) THERE HAVE BEEN UNDETERMINED BUT RELATIVELY SMALL NUMBER OF ARRESTS/DETENTIONS ON MAINLAND/ZANZIBAR IN VIOLATION OF SENSE OF ARTICLE 9 OF UNIVERSAL DECLARATION OF HUMAN RIGHTS. (B) SOME OF DETAINEES HAVE ALSO BEEN DEPRIVED OF RIGHTS UNDER ARTICLES 10 AND 11 OF UNIVERSAL DECLARATION. IN VARYING DEGREES THERE HAVE BEEN VIOLATIONS OF ARTICLES 19, 20 AND 21 OF UNIVERSAL DECLARATION. (C) ALTHOUGH ARBITRARY ARRESTS/DETENTIONS DO TAKE PLACE IN TANZANIA, WE DO NOT BELIEVE SITUATION CONSTITUTES "SUBSTANTIAL AND CONTINUED VIOLATIONS OF ABOVE STANDARDS OCCURRING AS MATTER OF OFFICIAL POLICY OR OF GROSS NEGLIGENCE ON PART OF GOVERNMENT." IN MOST INSTANCES, ARRESTS/DETENTIONS ARE RELATED TO SECURITY CONCERNS, REAL OR IMAGINED. UNFORTUNATELY, FRAGILE SOCIETY OF TANZANIA, AND MANY OTHER NATIONS OF WORLD, PREOCCUPATION WITH INTERNAL SECURITY GIVES RISE TO SUCH ABUSES OF CIVIL LIBERTIES. SITUATION IN TANZANIA IS EXACERBATED BY TENUOUS NATURE OF MAINLAND/ZANZIBAR RELATIONSHIP.

9. POSSIBLE US REPRESENTATION. EMB/AID DO NOT BELIEVE ANY REPRESENTATION BY USG TO TANGOV ON THIS MATTER WOULD IMPROVE SITUATION. NOR DO WE THINK DENIAL OR THREATENED DENIAL OF ECONOMIC ASSISTANCE ON BASIS OF SECTION 32 WOULD HAVE ANY EFFECT WHATSOEVER ON TANZANIAN HANDLING OF POLITICAL PRISONERS. IN OUR VIEW, ANY DEMARCHE OF THIS SUBJECT WOULD BE INTERPRETED BY TANGOV AS UNWARRANTED INTERFERENCE IN ITS INTERNAL AFFAIRS.

10. AMBASSADOR CARTER APPROVED IN DRAFT SUBSTANCE OF THIS MESSAGE BEFORE DEPARTURE HL.
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Message Attributes

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